

S/N 09/411,171

Response to Office Action Dated 2/27/2003

REMARKS

In view of the following remarks, Applicant respectfully requests reconsideration and allowance of the subject application.

§ 1.131 Declaration

Applicant submits herewith a Declaration under 37 C.F.R. §1.131 and supporting documentation to evidence that the invention was conceived in the United States prior to the March 18, 1999 press release by Realnetworks supporting the RealGuide Explorer Bar. Accordingly, this reference should be removed as a reference because it is not prior art.

The Declaration is signed by the named inventors except as follows. One of the named inventors (Kevin Warne) is no longer employed by the Applicant or is otherwise unavailable. However, MPEP 715.05 says that where joint inventors are "otherwise unavailable, the signatures of the other joint inventors are sufficient". Thus, the Declaration is sufficiently signed as it is signed by the remaining available joint inventors.

The Declaration and attached documentation (i.e., a disclosure document entitled, "A design and implementation for the seamless integration of a Web browser and an Internet Radio player using a local client server model") make clear that the subject matter of the subject application was conceived in the United States prior to the March 18, 1999 press release by Realnetworks supporting their RealGuide Explorer Bar.

Furthermore, the Declaration, the disclosure document, and additional attached documentation (i.e., email correspondence between patent counsel, the

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1 inventors and others) show that a constructive reduction to practice of the invention
2 was diligently pursued beginning prior to the filing date of the March 18, 1999 press
3 release by Realnetworks and continuing through to the filing of the above-identified
4 application. The disclosure document is dated previous to the March 18, 1999 press
5 release by Realnetworks, and subsequent email correspondence summarizes an
6 invention disclosure meeting and a continual process of pushing the application
7 through to filing. The elapsed time from the date of the disclosure document (which
8 dates before the March 18, 1999 press release by Realnetworks) and the filing date of
9 the subject application is less than one year which clearly illustrates "diligence in the
10 completion of [the] invention from a time just prior to the date of the reference
11 continuously up to the date of . . . filing [the] application" (MPEP 715.07).

12 Accordingly, the March 18, 1999 press release by Realnetworks supporting
13 the RealGuide Explorer Bar should be removed as a reference because it is not prior
14 art.

15 §102 Rejections

16 **Claims 1, 14 - 15 and 17** are rejected under 35 U.S.C. §102(a) as allegedly
17 being anticipated by RealPlayer G2, hereafter, RealPlayer, as supported in the
18 November 23, 1998 press release by Realnetworks. Applicant has canceled claims
19 1, 14 - 15 and 17.

20 **Claims 18 and 20 - 21** are rejected under 35 U.S.C. §102(a) as allegedly
21 being anticipated by Realnetworks' RealGuide Explorer Bar as supported in the
22 March 18, 1999 press release by Realnetworks. In view of the Declaration under
23 37 C.F.R. §1.131, the March 18, 1999 press release by Realnetworks is removed
24 as prior art. Therefore, the §102(a) rejection to claims 18 and 20 - 21 cannot
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1 stand. Applicant therefore respectfully requests withdrawal of the §102(a)
2 rejection to claims 18 and 20 - 21.
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4 **§103 Rejections**

5 Claims 2 - 13 stand rejected under 35 U.S.C. §103(a) as allegedly being
6 unpatentable over RealPlayer and Applicant's allegedly Admitted Prior Art
7 (AAPA). Applicant has canceled claims 2 - 13.

8 Claim 16 stands rejected under 35 U.S.C. §103(a) as allegedly being
9 unpatentable over RealPlayer and U.S. Patent No. 6,151,634 to Glaser et al.
10 Applicant has canceled claim 16.

11 Claim 19 stands rejected under 35 U.S.C. §103(a) as allegedly being
12 unpatentable over RealPlayer, the AAPA, and Realnetworks' RealGuide Explorer
13 Bar as supported in the March 18, 1999 press release by Realnetworks. The
14 Office admits that Realplayer and the AAPA do not teach the limitation in claim
15 19 that the radio toolbar displays at least one radio-toolbar button capable of
16 controlling the first source of streaming media irrespective of the Web page being
17 browsed. The Office relies on the Realnetworks' RealGuide Explorer Bar as
18 supported in the March 18, 1999 press release by Realnetworks to support the
19 contention that users could browse the Web through Microsoft® Internet Explorer
20 while still having control over streaming media, and that it therefore would have
21 been obvious to one of ordinary skill in the art to modify the graphical interface of
22 RealPlayer and the AAPA to be implemented in a Web browser as shown in the
23 March 18, 1999 press release in order to provide quick access to music and other
24 streaming media while browsing the Web. However, in view of the Declaration
25 under 37 C.F.R. §1.131, the March 18, 1999 press release by Realnetworks is

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1 removed as prior art, and the §103(a) rejection to claim 19 has no support.
2 Applicant therefore respectfully requests withdrawal of the §103(a) rejection to
3 claim 19.

4
5 **Conclusion**

6 All pending claims, 18 - 21, are believed to be in condition for allowance.
7 Applicant respectfully requests reconsideration and prompt issuance of the present
8 application. Should any issue remain that prevents immediate issuance of the
9 application, the Examiner is encouraged to contact the undersigned attorney to
10 discuss the unresolved issue.

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13 Respectfully Submitted,

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